

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
HEATHER COLLINS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 97-2784
)	(RWR)
BAXTER HEALTHCARE CORPORATION,)	
et al.)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

Plaintiff has moved for voluntary dismissal of this case without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). Defendant Baxter Healthcare Corporation ("Baxter") has opposed plaintiff's motion, asking that plaintiff's case be dismissed with prejudice. In the alternative, Baxter asks that if plaintiff is allowed to dismiss this case without prejudice, plaintiff be required to pay defendant's fees and costs incurred in litigating this matter.

"[T]o justify the denial of a motion for voluntary dismissal, a district court must find that dismissal will inflict clear legal prejudice on a defendant." Conafay v. Wyeth Labs., 841 F.2d 417, 419 (D.C. Cir. 1988). Here, Baxter has argued that it has expended resources in litigating and mediating this case, and that it would be inconvenienced if plaintiff refiled her claims after dismissing this action. That disadvantage to Baxter, however, does not constitute a showing of clear legal

prejudice. Id. Therefore, I will grant plaintiff's motion for voluntary dismissal.

The parties disagree on whether the dismissal should be with or without prejudice. Rule 41(a)(2) prohibits a plaintiff from dismissing an action in which an answer has been filed, as is true here, except with court approval "and upon such terms and conditions as the court deems proper." Fed. R. Civ. P. 41(a)(2). The purpose of Rule 41(a)(2) is to protect a defendant from undue prejudice or inconvenience from plaintiff's voluntary dismissal. See GAF Corp. v. Transamerica Ins. Co., 665 F.2d 364, 369 (D.C. Cir. 1981). Plaintiff had asked that Baxter waive her applicable statute of limitations for five years in return for plaintiff's voluntary dismissal without prejudice. Although Baxter declined, the clear import of plaintiff's request was that plaintiff anticipated refiling her claims in the future. Thus, Baxter likely will have to incur expenses in litigating this matter a second time. This "kind of disadvantage can be taken care of by a condition that plaintiff pay to defendant its costs and expenses incurred in the first action." Conafay, 841 F.2d at 419. Such costs and fees must be limited to those that defendant incurred in the initial litigation for work that cannot be used in future litigation or other pending litigation of plaintiff's claims. See id.; GAF Corp., 665 F.2d at 369. Thus, this action will be dismissed without prejudice on the condition that plaintiff pay an amount that may be warranted to cover

defendant's expenses in this case. If plaintiff fails to comply with this condition, the dismissal will become one with prejudice.

Since Baxter has not specified what fees and costs it has incurred on work that cannot be used in any future litigation of plaintiff's claims, it is hereby

ORDERED that Baxter file on or before _____, 2001, a detailed statement itemizing its costs and fees incurred in litigating this case for work that cannot be used in future litigation of plaintiff's claims, along with supporting documentation including, but not limited to, billing statements and time sheets. See Cauley v. Wilson, 754 F.2d 769, 772 (7th Cir. 1985). Plaintiff may file a response to Baxter's submission on or before _____, 2001. If plaintiff prefers to withdraw her motion to dismiss in light of the payment condition that will be imposed upon the dismissal, she must do so in this response. Baxter may file a reply to plaintiff's response on or before _____, 2001. It is further

ORDERED that this case be, and hereby is, referred to a Magistrate Judge for a Report and Recommendation on what appropriate fees and/or costs could be awarded to Baxter in this case. This Court will enter a final order of dismissal after reviewing the Report and Recommendation.

SIGNED this _____ day of _____, 2001.

RICHARD W. ROBERTS
United States District Judge